



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,231	06/30/2000	Jeffrey Bryson	704-P-1-USA	2817

7590 05/31/2005

Drummond & Duckworth
5000 BIRCH STREET
Suite 440
Newport Beach, CA 92660

EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,231

Applicant(s)

BRYSON, JEFFREY

Examiner

Mark Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 and 28-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 and 28-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 9/14/2004, which was received 3/16/2005. Acknowledgement is made to the amendment to claims independent claims 11 and 28, and the cancellation of claims 1-10,21-27 and 37-41, leaving claims 11-20 and 28-36 as pending in the instant application. The examiner has carefully considered the applicant's amendment and arguments, but did not find them convincing. Therefore the previous rejection is restated below, modified as necessitated by amendment.

Claim Objections

Claims 11 and 28 are objected to because of the following informalities:

The examiner would suggest in the last sentence of claim 11 that the applicant change the last sentence from "...a seller over the network system" to ...either a virtual or a primary seller. Also for claim 28, the examiner suggests that the applicant change "...from a primary seller or virtual" to ...from a primary or virtual seller. Appropriate correction is required.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures

may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

USC 112 Sixth Paragraph Notification

Applicant has provided means-plus function language in the instant claims, which could be construed as having a narrower meaning emanating from specific embodiments found in the specification. Since it is the applicant's responsibility to invoke USC 112 6th paragraph, the examiner will treat the claims using the broadest reasonable interpretation unless the applicant responds to the office action invoking USC 112 6th paragraph and identifying the exact limitations that the applicant is reading into the claims from the specification. Please be advised that should the applicant invoke USC 112 6th paragraph in response to this office action the response may still be made final using the rationale that the applicant has added new subject matter to the claims. A lack of response to this notice will be construed as prosecution history estoppel indicating that the applicant does not wish to invoke USC 112 6th paragraph.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11,16,18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (US 6,728,685) in view of Roberts.

In regards to claim 11, Ahluwalia discloses a network system for facilitating the negotiation and purchase of goods or services for buyers and sellers, the system comprising:

- a host processor system (FIG 7B);

- at least one buyer computer terminal including a display, operated by buyer of goods or services (FIG 7B);

- at least one primary seller computer terminal including a display, operated by a primary seller of goods or services for selling the goods or services of the seller (FIG 7B);

Ahluwalia teaches a customer assistance center/business assistance center, and customer service representatives (CAC/BAC CSR) that are connected with the system and are available to negotiate. Applicant's disclosure further states that the virtual seller and primary sellers have an identical function (specification, page 30). Ahluwalia, however does not specifically mention that there is a virtual seller and a primary seller. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a virtual seller and a primary seller, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis co.*, 193 USPQ 8.

Ahluwalia teaches a customer assistance center/business assistance center, and customer service representatives (CAC/BAC CSR) that are connected with the system and are available to negotiate, but does not specifically mention that the virtual seller is selling the goods or services of the primary seller. Roberts teaches accessing a secondary sales operator when a primary sales representative is not available (col 15, lines 30-45). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include in Ahluwalia accessing a secondary sales operator when a primary sales representative is not available, because this would assure that a sale is not lost by having the customer wait on the line for an extended amount of time. This would increase revenues and improve customer service by eliminating the frustration of waiting when a customer is ready to buy.

said virtual seller including a database storing product information concerning the goods or services of the primary seller (col 20, lines 55-60);

a first real time two-way communication connection for selectively connecting said buyer computer terminal to said primary seller computer terminal or said virtual computer seller through said host processor system,

said first communication connection for transmitting transaction data concerning the purchase of goods or services of said primary seller, input by a buyer into said buyer computer terminal, in real time to said seller computer terminal or to said virtual seller computer terminal for display to said seller and for transmitting transaction data, input by a seller into said seller computer terminal or said virtual seller computer terminal, in real time to said buyer computer terminal for display to the buyer;

said host processor system including processing means for selectively connecting a buyer computer terminal to either a primary seller computer terminal or a virtual seller computer based upon predetermined criteria, and

a sale agreement means for enabling a buyer to reach an agreement concerning the purchase of goods or services from a seller over the network system (see response to claims 7-10).

In regards to claim 16, Ahluwalia teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 18, Ahluwalia teaches

a second communication connection for connecting a buyer operating said buyer computer terminal and a primary seller operating said primary seller computer terminal or virtual seller operating said virtual seller computer terminal,

said second communication connection permitting real time speech communication between buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (see response to claims 1 and 11).

In regards to claim 20, Ahluwalia teaches wherein the goods or services include vehicles (col 5, lines 53-62).

Claims 14,15,17,21-27,35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (US 6,728,685) in view of Roberts and Further in view of Official Notice.

In response to claims 14 and 15, the combination of Ahluwalia/Roberts determining whether the primary seller has goods or services sought to be purchased by the buyer and the use of zip codes from both buyers and seller, but does not specifically mention the location features of these two claims. It was old and well known in the art at the time of the invention to locate and match buyers and sellers by geographic location. It would have been obvious to a person having ordinary skill in the art to include in Ahluwalia/Roberts the location features of the instant claims, because this would provide the buyer with the location of stores that are close and thus saving a long trip to pick up the product, saving time and effort.

In regards to claim 17, Ahluwalia teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 21, Ahluwalia discloses a method of facilitating the negotiation and purchase of goods or services for buyers and sellers comprising the steps of
providing a host processor system interconnected with a plurality of sellers and buyers of goods or services;

transmitting buyer identification information by a buyer of goods or services to the host processor system;

selecting one of the plurality of sellers based upon the buyer identification information by the buyer;

providing a real time two-way data connection between the buyer and the selected seller for transmitting transaction data from the buyer in real time for visual display of the purchase data to the seller and for transmitting transaction data concerning the purchase of goods or services of said primary seller from the seller in real time for visual display of the purchase data to the buyer;

providing a real time two-way speech connection between the buyer and the selected seller connected simultaneously during said first communication connection and for permitting real time speech communication between the buyer and the selected seller for facilitating the real time spoken negotiations for the purchase and sale of goods or services, and

agreeing over the network system to the purchase of goods or services from a seller (see response to claim 5,11,14 and 15).

In regards to claim 22, Ahluwalia teaches wherein the buyer identification information provided by the buyer includes the buyer location (see response to claims 14 and 15).

In regards to claim 23, Ahluwalia teaches compiling inventory records by the plurality of sellers corresponding to the inventory of goods or services offered for sale by the plurality of sellers;

transmitting the inventory records from the plurality of sellers to the host processor system; and

wherein the buyer identification information by the buyer includes a description of goods or services sought to be purchased (see response to claims 6-10).

In regards to claim 24, Ahluwalia teaches searching the inventory records for a seller having goods or services sought to be purchased by a buyer; and

the step of selecting one of the plurality of sellers is based upon results of searching the inventory records for a seller having goods or services sought to be purchased by the buyer (see response to claims 6-10).

In regards to claim 25, Ahluwalia teaches obtaining credit and financial information from a buyer; and

determining whether the buyer is financially capable of paying for goods or services sought to be purchased based upon the credit and financial information of the buyer (col 8, lines 32-46).

In regards to claim 26, Ahluwalia teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 27, Ahluwalia teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 35, Ahluwalia teaches wherein the goods or services include vehicles (see response to claim 9).

In regards to claim 36, Ahluwalia teaches wherein the goods or services include vehicles (col 5, lines 53-62).

Claims 12,13,19 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia in view of Roberts and further in view of Kannan (2001/0054064).

In regards to claims 12 and 13, the combination of Ahluwalia/Roberts teaches a Customer service representative that fields calls from customers from various different entities 24 hours a day including dealers and manufactures, but does not specifically mentioned that the calls are answered because the primary seller is not available. Kannan teaches a CSR being located at a plurality of locations (page 5, para 71). Kannan also teaches business rules in deciding whether to apply a live operator (page 6, para 80), regulating customer service according to the policy of a company (dealer) and intelligent routing where live operators are associate with calls based on availability and matching characteristics (page 5, para 94 - page 10, para 120). It would have been obvious to a person having ordinary skill in the art to include in Ahluwalia the multiple

locations of the CSR and rules for determining availability of CSR's as taught by Kannan, because this would provide increased availability of CSR's that are qualified to complete a transaction thus providing improved service to the customer and shorter waits (page 8, para 96).

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the representative and databases at any location, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

In regards to claim 19, Ahluwalia teaches a second communication connection for connecting a buyer operating said buyer computer terminal and a primary seller operating said primary seller computer terminal or virtual seller operating said virtual seller computer terminal,

said second communication connection permitting real time speech communication between buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (see response to claims 1 and 11).

In regards to claim 28, Ahluwalia discloses a method of facilitating the negotiation and purchase of goods or services for buyers and sellers comprising the steps of:

providing a host processor system interconnected with at least one primary seller of goods or services,

at least one virtual seller who is not the primary seller including a database storing product information concerning the goods or services of the primary seller; and

a plurality of buyers of goods or services;

transmitting buyer identification information by a buyer to the host processor system;

selecting the virtual seller or a primary seller by the host processor system based upon predetermined criteria;

providing a real time two-way data connection between the buyer and the selected primary seller or virtual seller for transmitting transaction data from the buyer in real time for visual display of the purchase data to the seller and for transmitting transaction data from the seller in real time for visual display of the purchase data to the buyer, and

agreeing over the network system to the purchase of goods or services from a primary seller or virtual. (see response to claims 11,12 and 13) .

In regards to claim 29, Ahluwalia teaches determining whether the primary seller has ceased sales operations; and

selecting the virtual seller or a primary seller by the host processor system is based upon the determination of whether the primary seller has ceased sales operations (see response to claims 12 and 13).

In regards to claim 30, Ahluwalia teaches wherein said primary seller operates and ceases sales operations during predetermined periods of the day (see response to claims 12 and 13).

Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia in view of Roberts in view of Kannan (2001/0054064) and further in view of Official Notice.

In regards to claim 31, Ahluwalia teaches determining the location of the buyer;
and

the step of selecting the virtual seller or a primary seller by the host processor system is based upon the determination of the location of the buyer (see response to claim 15).

In regards to claim 32, Ahluwalia teaches determining the location of the buyer (see response to claim 13); and

determining what goods or services are sought to be purchased by the buyer;
and

the step of selecting the virtual seller or a primary seller by the host processor system is based upon the determination of the location of the buyer and the determination of what goods or services are sought to be purchased by the buyer (see response to claim 15).

In regards to claim 33, Ahluwalia teaches providing a second communication connection between a buyer and a primary seller or virtual seller (see response to claim 18),

the second communication connection permitting real time speech communication between the buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (see response to claim 5,11).

In regards to claim 34, Ahluwalia teaches providing a second communication connection between a buyer and a primary seller or virtual seller,

the second communication connection permitting real time communication between the buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (see response to claim 5).

Response to Arguments

Applicant's arguments filed 6/30/2000 have been fully considered but they are not persuasive.

Applicant argues that the combination of primary and virtual sellers is nowhere suggested in the prior art. The examiner disagrees and directs the applicants attention to (Roberts col 15, lines 20-45).

Applicant argues that “the virtual sellers are selected when predetermined criteria suggests that the primary sellers are incapable or not properly situated to complete the transaction. Thus, the virtual seller cannot be considered mere duplication as they perform an additional function not previously provided.” The examiner disagrees and points out once again that applicant’s disclosure states that the virtual seller and primary sellers have an identical function (specification, page 30). Webster’s dictionary defines duplicate as two things exactly alike and produced by the same process. Therefore, by applicant’s own disclosure the primary and secondary sellers are duplicate processes. The selection process that the applicant mentions is thought to be independent of the function of the primary and secondary sellers and is taught by Roberts in col 15, lines 30-45, (call routing to primary or secondary sales representatives).

In response to applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Roberts’ is clearly concerned with providing quick and efficient service when a primary sales representative is not available, Ahluwalia would be motivated to implement this process for the same reasons of providing quick and efficient customer service.

Official Notice Traversal

A “traverse” is a denial of an opposing party’s allegations of fact. The Examiner respectfully submits that applicants’ arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants’ arguments and comments as constituting a traverse, applicants’ arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner’s notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including

After Final communications labeled

"Box AF"]


(571) 273-6755 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]



Mark Fadok

Patent Examiner



CHANTAL COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600